



STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

January 7, 2022

**DEADLINE ESTABLISHED FOR PUBLIC COMMENTS
REGARDING PETITION SUMMARY**

**STATEWIDE BALLOT PROPOSAL SPONSORED BY
REPRODUCTIVE FREEDOM FOR ALL**

Under Michigan election law, the sponsor of an initiative, referendum, or constitutional amendment petition may request approval of the summary of the purpose of the petition prior to placing the petition in circulation. MCL 168.482b(1). If a petition sponsor avails itself of this process, a summary of the proposal’s purpose must be prepared by the Director of Elections and presented to the Board of State Canvassers (Board) for approval or rejection. MCL 168.482b(2). The deadline for the Board to approve or reject the content of the petition summary is the 30th day following the sponsor’s submission. MCL 168.482b(1).

If the Board approves a petition summary as prepared by the Director of Elections, the sponsor must print the approved summary in 12-point type in the heading of the petition, and the Board will be barred from considering a subsequent challenge alleging that the summary is misleading or deceptive. MCL 168.482(3), 168.482b(1), (3). Further, if the Board subsequently determines that the petition contains enough valid signatures to merit certification, the Director of Elections and Board are authorized to draft and approve ballot wording that differs from the petition summary. Opinion of the Attorney General No. 7310 (May 22, 2019).

The “summary of the purpose of the proposed amendment or question” prepared by the Director of Elections may be up to 100 words in length and must consist of a true and impartial statement in language that does not create prejudice for or against the proposal. MCL 168.482b(2). The summary also must inform signers of the subject matter of the petition but need not be legally precise, and use words having a common, everyday meaning to the public. *Id.*

REPRODUCTIVE FREEDOM FOR ALL submitted a request for approval of the petition summary. A copy of the full text of the proposed initiated law is provided with this announcement. **The Director of Elections is inviting public comments regarding the summary of the purpose of this proposed initiative petition, including submissions of suggested language, as follows:**

<i>Deadline for submission of suggested petition summary and/or explanatory materials to staff:</i>	January 14, 2022, 5:00 p.m.
<i>Date of Board of State Canvassers meeting at which the summary will be considered:</i>	To be announced
<i>Deadline for Board of State Canvassers to approve or reject the summary of the content of the petitions:</i>	February 7, 2022

Submissions may be made via email (MDOS-Canvassers@Michigan.gov), U.S. Mail (P.O. Box 20126, Lansing, Michigan 48901), or hand delivery (address provided below). **Submissions must be received in this office by the date and time specified to be considered.**

Reproductive Freedom for All Michigan Ballot Text

(1) Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.

An individual's right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.

Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgment of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual.

(2) The state shall not discriminate in the protection or enforcement of this fundamental right.

(3) The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

(4) For the purposes of this section:

A state interest is "compelling" only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual's autonomous decision-making.

"Fetal viability" means: the point in pregnancy when, in the professional judgment of an attending health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(5) This section shall be self-executing. Any provision of this section held invalid shall be severable from the remaining portions of this section.

**STATE OF MICHIGAN
BOARD OF STATE CANVASSERS**

In re Petition Summary Request
of Reproductive Freedom for All,

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**MEMORANDUM OF REPRODUCTIVE FREEDOM FOR ALL
IN SUPPORT OF SUGGESTED PETITION SUMMARY LANGUAGE**

I. THE PROPOSED PETITION SUMMARY

Reproductive Freedom for All proposes this summary of the attached proposal for its petition:

Constitutional amendment declaring that every individual has a fundamental right to reproductive freedom including the right to make and carry out decisions about pregnancy, such as prenatal care, childbirth, postpartum care, temporary and permanent birth control, abortion, miscarriage management, and infertility; allowing the state to prohibit abortion after fetal viability unless needed to protect a patient's life or health; forbidding discrimination in the protection or enforcement of this fundamental right; prohibiting the prosecution of an individual for their miscarriage, stillbirth, or abortion or for helping someone exercise their right to reproductive freedom; and invalidating the 1931 state criminal abortion ban.

This 100-word summary complies with Michigan law, should be recommended by the Director to the Board of Canvassers, and should be adopted by the Board of Canvassers.

II. THE LEGAL STANDARDS GOVERNING PETITION SUMMARIES

Michigan law sets for the standards a petition summary must meet:

- (b) The summary is limited to not more than 100 words and must

consist of a true and impartial statement of the purpose of the proposed amendment or question proposed in language that does not create prejudice for or against the proposed amendment or question proposed.

(c) The summary must be worded as to apprise the petition signers of the subject matter of the proposed amendment or question proposed, but does not need to be legally precise.

(d) The summary must be clearly written using words that have a common everyday meaning to the general public.

MCL 168.482b(2)(b)-(d). Similar standards exist in other states. *See, e g, Fairness and Accountability in Ins Reform v Greene*, 886 P2d 1338, 1346; 180 Ariz 582 (1994) (“[T]he purpose of the required analysis is to assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal’s contents and the changes it would make if adopted . . . The analysis and description must eschew advocacy – argument – for or against the proposal’s adoption.”); *Gaines v McCuen*, 758 SW2d 403, 406; 296 Ark 513 (Ark 1988) (“The ballot [summary] must accurately reflect the general purposes and fundamental provisions of the proposed initiative, so that an elector does not vote for a proposal based on its description in the ballot [summary], when, in fact, the vote is for a position he might oppose.”); *Advisory Opinion to Attorney Gen re Term Limits Pledge*, 718 So2d 798, 803 (Fla 1998) (holding that the purpose of requiring the explanatory statement “is to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot”) (internal quotations omitted; citation omitted).

The standards used in MCL 168.482b are taken from several other statutes that have long governed the preparation of ballot summaries for proposals in Michigan. *Compare* MCL 168.482b with MCL 168.32(2), 168.85, and 168.643a. The contents of those ballot summaries provide guidance for what constitutes a compliant petition summary under MCL 168.482b.

For example, the Director and Board in their previous ballot summaries have repeatedly disclosed the impact on current or future laws of a proposal if adopted. The summary for 2018 Proposal 1 stated that the proposal would:

- *Change several current violations from crimes to civil infractions.*

(emphasis added).

Similarly, the ballot summary for 2012 Proposal 2 was clear on the proposal's impact on current and future laws:

- *Invalidate existing or future state or local laws that limit the ability to join unions or bargain collectively, and to negotiate and enforce collective bargaining agreements, including the employees' financial support of their labor unions. Laws may be enacted to prohibit public employees from striking.*
- *Override state laws that regulate hours and conditions of employment to the extent that those laws conflict with collective bargaining agreements. (emphasis added).*

III. THE PROPOSED SUMMARY COMPLIES WITH MICHIGAN LAW

A. *Clause-By-Clause Analysis*

CLAUSE 1: "Constitutional amendment declaring that every individual has a fundamental right to reproductive freedom including the right to make and carry out decisions about pregnancy, such as prenatal care, childbirth, postpartum care, temporary and permanent birth control, abortion, miscarriage management, and infertility."

This clause is essentially the first sentence of the proposal. For accuracy and to ensure that petition signers understand the full scope of the right, the entire list from the proposal is included. Using only a partial list would be inaccurate and would create prejudice for or against the proposal.

This clause is changed slightly but immaterially from the first sentence to eliminate technical medical terminology – using the simpler phrase "temporary and permanent birth control" instead of "contraception" and "sterilization," and using simpler words such as "carry out" instead of "effectuate."

CLAUSE 2: “allowing the state to prohibit abortion after fetal viability unless needed to protect a patient’s life or health.”

This clause is an accurate paraphrase of the final sentence of Section 1 of the proposal.

In a previous summary of a proposal involving abortion, an exception such as this was included in the summary. *See* 1988 Proposal A Summary (stating that there was an exception to the ban on the use of tax funds for abortion if “necessary to save the life of the mother”). Thus it is appropriate based on past practice as well as necessary for accuracy to include this exception in the summary. Failure to include it would create prejudice for or against the proposal.

The final sentence of section 1, as summarized by clause 2, uses language that is familiar to the public given the viability standard in *Roe v. Wade* where the Court defined the final stage of pregnancy as that period which occurs after the fetus becomes viable and in which the Court permitted the state to regulate or prohibit abortion after viability unless “it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.” *Roe v Wade*, 410 US 113, 165 (1973), *holding modified by Planned Parenthood of SE Pennsylvania v Casey*, 505 US 833 (1992).

Clause 2 truthfully summarizes the final sentence of Section 1 of the proposal.

CLAUSE 3: “forbidding discrimination in the protection or enforcement of this fundamental right.”

This clause is nearly verbatim the wording of Section 2 of the proposal. This important provision of the proposal is necessary to include in the summary to ensure that the summary truthfully discloses the content of the proposal. Its omission would create prejudice.

CLAUSE 4: “prohibiting the prosecution of an individual for their miscarriage, stillbirth, or abortion or for helping someone exercise their right to reproductive freedom.”

This clause is an accurate summary of Section 3 of the proposal working within the confines of 100 words. It uses the examples found in Section 3 as examples of the occurrences for

which a person cannot be prosecuted in order to truthfully illustrate the entire scope of the prohibition to a signer.

CLAUSE 5: “invalidating the 1931 state criminal abortion ban.”

As demonstrated earlier, summaries often disclose that the proposal would invalidate current or future laws. A true and impartial summary must disclose that the proposal would invalidate Michigan’s 1931 state criminal abortion ban, MCL 750.14.

Laws that criminalized abortion before *Roe v. Wade* was decided and have never been repealed are commonly referred to as pre-*Roe* “abortion bans.” Because Michigan’s 1931 law imposes a criminal penalty for administering “to any pregnant woman any medicine, drug, substance of thing whatever, with intent to thereby procure the miscarriage of any such woman,” MCL 750.14, it was understood at the time it was passed and is understood today as banning virtually all abortion, with minimal exceptions. *See, e g*, Bridge Magazine, “Old Michigan law could ban abortion, as Texas ignites *Roe v. Wade* debate,” <https://www.bridgemi.com/michigan-gouvernement/old-michigan-law-could-ban-abortion-texas-ignites-roe-v-wade-debate>; WDET, “Michigan Would Revert to Restrictive Abortion Ban If *Roe v. Wade* is Overturned,” <https://wdet.org/posts/2021/12/08,91805-michigan-would-revert-to-restrictive-abortion-ban-if-roe-v-wade-is-overturned/>. Thus, describing Michigan’s 1931 law, MCL 750.14, as a “criminal abortion ban” is a true and impartial description of a notable law that would be impacted by the measure. Moreover, given the record news coverage regarding the potential for this law to be revived should *Roe* be reversed, failure to mention the effect of this measure on that statute would be prejudicial for or against the measure.

B. Overall Analysis

This summary presents the substance of the proposal in the same order as the proposal and

it is complete, omitting no material part of the proposal. *See, e g, Burgess, supra; Conway, supra; Schuch, supra; Hopkins, supra.*

This summary also eschews legal jargon and citations because it doesn't have to be "legally precise," instead employing words which "have a common everyday meaning to the public." MCL 168.482(2)(c), (d).

Finally, the summary is factual as well as "true and impartial," creating no "prejudice for or against" the proposal, including the disclosure that Michigan's 1931 criminal abortion ban would be invalidated.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated the proposed summary should be recommended by the Director and adopted by the Board.

Respectfully submitted,

/s/ Mark Brewer

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Dated: January 7, 2022